IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 1 of 1998
DATE OF DECISION: 23.7.2007

The Commissioner of Income-tax, Jalandhar

…Applicant

Versus

M/s New India Rubber and Chemical Industries, Jalandhar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the applicant-revenue.

M.M. KUMAR, J.

This order shall dispose of I.T.R. Nos. 1 and 39 of 1998 as common question of law and facts are involved. The details in respect of the abovementioned references are as under:-

Sr. No.	ITR No.	Arising out of	Assess-ment Year	Date of the order of the ITAT, Amritsar Bench, Amritsar
1.	1 of 1998	ITA No. 1446/ASR/89	1980-81	9.9.1994
2.	39 of 1998	ITA No. 949(ASR)/1995	1981-82	19.4.1996

The facts are being referred from ITR No. 1 of 1998. The original assessment in this case had been completed on 27.3.1982 on a total income of Rs. 81,466/-. On 17.3.1983, a search was conducted at the premises of Shri Ashok Kumar, brother of Shri Raj Kumar, ex-employee of the assessee. During the course of search a cheque book relating to Account No. 350 in the name of Shri Raj Kumar Virk, issued by the Punjab and Sind Bank, New Grain Market, Jalandhar, was found. Shri Ashok Kumar was required to explain the significance of cheque No. 027276, dated 30.4.1979, showing a deposit of Rs. 30,000/-. The Assessing Officer proceeded to reopen the assessment under Section 148 of the Act. After considering the explanation of the assessee firm, the Assessing Officer held that Account No. 350 in Punjab and Sind Bank, Jalandhar in the name of Shri Raj Kumar was actually the account of the assessee firm and he added a sum of Rs. 57,011/- by treating it as the income of the assessee firm. The order dated 30.12.1988, passed by the Assessing Officer was challenged in appeal by the assessee firm before the CIT (A), who rejected the plea of the assessee firm, vide order dated 14.6.1989, with regard to reopening of the assessment holding that the Assessing Officer had validly and legally reopened the assessment on the basis of material found at the time of search, which was supported by the statements of Shri Ashok Kumar and Shri Raj Kumar.

Feeling aggrieved, the assessee firm further filed an appeal before the Tribunal assailing the order dated 14.6.1989 passed by the CIT (A). The Tribunal while following the law laid down by

Hon'ble the Supreme Court in the case of **I.T.O. v. Lakhmani Mewal Das, (1976) 103 ITR 437**, allowed the appeal by observing as under:-

> " 8. In view of the ratio laid down by the Hon'ble Supreme Court and applying the same to the facts of the present case, we are of the opinion that the re-opening of the assessment is without any sufficient material on record. The Assessing Officer has presumed that the entries found in the account No. 350 related to the affairs of the assessee-firm. In fact there is no material on record to justify the re-opening. The material brought on the basis of two statement of Sh. Ashok Kumar and Sh. Raj Kumar was not sufficient to re-open the assessment. The Assessing Officer on the basis of presumption had formed the belief, which cannot be held sufficient in the eye of law. In view of our discussion, we are of the opinion that the re-opening is illegal. We therefore, set aside the order of the C.I.T. (A) and cancelled the assessment made as such. Since, we have cancelled the assessment on legal issue, we do not think it proper to discuss the merits of the addition."

Thereafter, the revenue filed reference application under Section 256(1), which was declined by the Tribunal, vide order dated 16.1.1995. The revenue then filed I.T.C. No. 91 of 1995 and I.T.C. No. 34 of 1997, under Section 256(2) of the Act, in respect of

assessment years 1980-81 and 1981-82 respectively. In pursuance to the orders passed by this Court on 17.2.1997 and 12.9.1997 in I.T.C. Nos. 91 of 1995 and 34 of 1997 respectively, the Tribunal after drawing the statement of the case has referred the following questions of law for opinion of this Court:-

> "1. Whether on the facts and in the circumstances of the cases, the Tribunal was right in law in holding the reopening of the assessment was without any sufficient material on record?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in cancelling the assessment?"

After hearing learned counsel for the revenue, we are of the considered view that it is well settled that one Judge of same evidence and material may record a finding different than the one recorded by another Presiding Officer but then it would not constitute a valid ground to conclude that a substantial question of law would arise. The sufficiency or insufficiency of material on record would not be within the domain of this Court as it cannot constitute the basis for reversing the view taken by the Tribunal. Once the Tribunal in its wisdom has held that the material was insufficient for reopening of assessment under Section 148 then it is not possible for this Court to record a contrary finding. Therefore, the first question has to be answered against the revenue and in favour of the assessee. Moreover, the Tribunal has rightly placed reliance on a judgment of Hon'ble the Supreme Court in the case of Lakhmani Mewal Das

(supra). The second question, which is consequential in nature concerning cancelling of assessment by the Tribunal, would necessarily go against the revenue. For the aforementioned view, we draw support from a Division Bench judgment of Patna High Court in the case of **P.K. Haldar & Co. v. Commissioner of Income Tax, (1999) 237 ITR 317 (Pat)**.

In view of the above, these references are answered against the revenue and in favour of assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 23, 2007
Pkapoor